

### REMARKS/ARGUMENTS

Claims 1-35 are pending in the application, with claims 2-6 and 9-35 having been withdrawn.

Beginning on page 3 of the final Office Action of September 12, 2006, claims 1, 7 and 8 are rejected under 35 U.S.C. § 102(e) as being clearly anticipated by Labe, Jr. et al. (U.S. 2002/0091605). In response to this rejection, Applicant is enclosing herewith a Declaration under 37 C.F.R. § 1.131 which swears behind and removes Labe as a reference.

The Labe application was published on July 11, 2002 and has a filing date of December 20, 2000. The publication is based on provisional filing date of November 1, 2000, which is therefore the effective filing date of Labe. The accompanying Declaration establishes that the present invention was completed prior to the November 1, 2000 effective date of Labe. As set forth in the Declaration, the present invention was described in a draft patent application prepared and revised prior to November 1, 2000. A copy of the application is attached to the Declaration as Exhibit A. From the time prior to November 1, 2000 until the filing of the present application on February 2, 2001, the Applicant was diligent in getting the application completed and on file. As set forth in the Declaration, the Applicant continued to confer and work with his then attorney regarding the draft patent application and the revision thereof. The ongoing activity is evidenced by Exhibit B attached to the Declaration which is a copy of an e-mail message from the Applicant to his then attorney inquiring as to the status of a draft of the application during the process of review and revision of the draft.

It is therefore respectfully submitted that the attached Declaration under 37 C.F.R. § 1.131 is effective to swear behind and remove the Labe application as a

Appl. No. 09/776,379

Attorney Docket No. 82347.0002

Amdt. Dated November 22, 2006

Customer No.: 26021

Reply to Final Office Action of September 12, 2006

reference. With that being the case, the present application should be in condition for allowance, and a notice to that effect is respectfully.

If there are any fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-1314.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

Date: November 22, 2006

By: 

John P. Scherlacher

Registration No. 23,009

Attorney for Applicant(s)

1999 Avenue of the Stars, Suite 1400

Los Angeles, California 90067

Phone: (310) 785-4600

Fax: (310) 785-4601